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5 UNITED STATES DISTRICT COURT
6 WESTERN DISTRICT OF WASHINGTON
7 AT TACOMA

8 LARRY LLOYD,

9 Plaintiff,

10 v.

11 MIKE POWELL, ED KLAHN, and C/O
12 PROSE,

13 Defendants.

No. C09-5734 BHS/KLS

ORDER DENYING MOTION TO
COMPEL DISCOVERY

14 Before the court is Plaintiff's motion to compel. Dkt. 73. Defendants oppose the motion.
15 Dkt. 83. Having considered the motion, opposition, and balance of the record, the court finds
16 that the motion should be denied.

17 **DISCUSSION**

18 **A. Good Faith Certification**

19 A party may apply to the court for an order compelling discovery "upon reasonable
20 notice to other parties and all persons affected thereby." Fed. R. Civ. P. 37(a). The motion also
21 "must include a certification that the movant has in good faith conferred or attempted to confer
22 with the person or party failing to make the discovery in an effort to secure the information or
23 material without court intervention." Fed. R. Civ. P. 37(a)(2)(B). In addition, "[a] good faith
24 effort to confer with a party or person not making a disclosure or discovery requires a face-to-
25 face meeting or a telephonic conference." Local Rule CR 37(a)(2)(A).
26

1 Plaintiff's previous motions to compel were denied as Plaintiff failed to include a
2 certification that he, in good faith, conferred or attempted to confer with the person or party
3 failing to make the discovery in an effort to secure the information or material without court
4 intervention in accordance with Fed. R. Civ. P. 37(a)(2)(B). Dkt. 70. In this motion, Plaintiff
5 contends that he attempted on numerous occasions to confer with counsel for Defendants. Dkt.
6 73, p. 2.¹ However, counsel for Defendants Powell, Klahn and Prose states in his declaration
7 that Plaintiff never wrote or otherwise contacted counsel for Defendants prior to filing the
8 motion to compel. Dkt. 84. Accordingly, there is a serious question as to whether Plaintiff has
9 attempted to comply with Rule 37 or CR 37(a)(1)(A)'s requirement to meet or confer prior to
10 bringing his motion. This alone is grounds to deny Plaintiff's motion to compel.
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12 Moreover, the court's review of Plaintiff's requests confirms that he is merely attempting
13 to have Defendants change their responses because Plaintiff is not satisfied with the answers.
14 This is not a proper basis for an order compelling production.
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16 **B. Plaintiff's Motion to Compel**

17 Pursuant to Rule 26(b)(1) of the Federal Rules of Civil Procedure, parties may obtain
18 discovery of relevant information. Relevant information is defined as information that is
19 "reasonably calculated to lead to the discovery of admissible evidence." Fed. R. Civ. P. 26(b)(1).
20 The Court may deny relevant discovery, however, if the "burden or expense of the proposed
21 discovery outweighs its likely benefit." Fed. R. Civ. P. 26(b)(2)(iii). After careful review of the
22 discovery requests, the objections stated, and argument of the parties, the Court finds that the
23 motion to compel should be denied.
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26 ¹ Plaintiff also sought to compel answers to interrogatories, requests for production and requests for admissions that were directed to Dr. Bokhari. That portion of his motion was denied as moot as Dr. Bokhari's motion for summary judgment was granted and all claims against her were dismissed with prejudice. Dkt. 75.

1 Plaintiff alleges that he contracted food poisoning at the Forks City Jail from a “TV
2 style” dinner and that Defendants violated his Eighth Amendment rights when they forced his
3 premature release from the hospital and returned him to the Kitsap County Jail. Dkt. 4.

4 Plaintiff takes exception to several of Defendant Klahn’s responses relating to Plaintiff’s
5 claim that Dr. Bokhari informed Defendant Klahn that Dr. Bokhari found high levels of toxic
6 poisons in Plaintiff’s kidneys. For example:

7
8 Plaintiff ask defendant Sgt. Klahn: answer the evasive and incomplete
9 “Interrogatory No. 17: If your answer to interrogatory No. 16 is yes, were you
10 contacted by the city of Forks Hospital District No. 1; Doctor F. Bokhari, and
11 informed that inmate/patient Larry Lloyd had high levels of toxic poison in his
12 kidney? Defendant Klahn Answer: Objection: this interrogatory improperly
13 assumes facts not in evidence. There is no evidence that doctor Freeha Bokhari
14 ever diagnosed plaintiff with “high levels of toxic poison in his kidney.” In fact,
15 Dr. Bokhari has testified that she never diagnosed plaintiff as suffering from any
16 sort of kidney damage. Subject to and without waiving this objection, not
17 applicable.

18 Dkt. 73, p. 10. Plaintiff also objects to “not applicable” answers to interrogatories 23, 24 and 25,
19 the answers to which were contingent on “yes” answers to each immediately preceding
20 interrogatory. Plaintiff also seeks to compel phone records from Defendant Klahn to prove that
21 Dr. Bokhari contacted the jail and informed Defendant Klahn that Mr. Lloyd was diagnosed with
22 high levels of toxic poison in his kidney. *Id.* However, the undisputed evidence in this case
23 reflects that Dr. Bokhari did not diagnose Mr. Lloyd with toxic poisoning or kidney damage.²
24 Mr. Lloyd also claims that the information “that’s being concealed” by Mr. Klahn can be proven
25 through a letter sent to Dr. Bokhari and letters sent to his girlfriend.” Dkt. 95, p. 5.

26 ² Plaintiff’s claims against the treating physician at the Forks Community Hospital have been dismissed with
prejudice. Dkt. 75. Plaintiff claimed, in part, that Dr. Bokhari failed to diagnose that he had suffered food
poisoning; however, tests performed at the hospital showed no toxins or damage to Plaintiff’s kidneys. Over a
month after his release from the hospital, Mr. Lloyd made a written request of Dr. Bokhari to change or modify the
medical record to reflect that he had sustained a kidney injury. Dkt. 21, p. 3. She refused to do so because she did
not believe that Mr. Lloyd suffered kidney damage. *Id.*

1 Defendant Klahn has answered the interrogatories under oath. Although it is clear that
2 Mr. Lloyd is unhappy with the answers, this is not a reason to compel further responses. If Mr.
3 Lloyd has evidence to contradict the responses, he may attempt to impeach the defendant with
4 that evidence at trial.

5 Plaintiff also seeks to compel Defendant Powell to respond to interrogatories regarding
6 whether he has a due process right to a medical follow-up. *Id.*, p. 11. Defendant Powell
7 objected to these interrogatories as calling for an improper legal conclusion. A party need not
8 provide legal conclusions in responses to discovery requests.

9 Accordingly, it is **ORDERED**:

10 (1) Plaintiff's motion to compel (Dkt. 73) is **DENIED**.

11 (2) The Clerk of the Court shall send a copy of this Order to Plaintiff and to counsel
12 for Defendants.
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15 DATED this 30th day of August, 2010.

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19 Karen L. Strombom
20 United States Magistrate Judge
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